

## **Ch. 61: Hazardous Materials Storage**

[Adopted 6-28-82 AdjATM Art. 16, as amended.

Replaced 5-13-97 AdjATM Art. 33. Amendments noted where applicable.]

### **§ 61.1. Authority.** [Amended 11-12-2002 STM Art. 16]

This bylaw is adopted by the Town of Westford under its home rule powers; its police powers to protect the public health, safety, and welfare and its authorization under M.G.L.ch. 40, § 21(1).

### **§ 61.2. Purpose.**

The purpose of this bylaw is to protect, preserve, and maintain the existing and potential groundwater supply, groundwater recharge areas, surface waters, air quality and natural environment within the Town of Westford from contamination, and to protect public health and safety. Nothing in this bylaw shall be construed as inconsistent with, or in interference with, the authority vested upon the Fire Chief under M.G.L. ch. 148, or any state rules and regulations adopted pursuant thereto.

### **§ 61.3. Definitions.** [Amended 11-12-2002 STM Art. 16]

The following definitions shall apply in the interpretation and implementation of this bylaw:

**Abandoned** means being out of service for a period in excess of 180 days, in the case of a tank or storage facility for which a license is required under the provisions of M.G.L.Ch. 148, or for a period of 12 months, in the case of any other tank or storage facility.

**Above-ground storage tank (AST) or storage facility** shall mean any tank or storage facility, whether inside or outside a building, without backfill over or at the sides of the tank. A fuel oil tank contained within a building or vault, including a cellar, is considered to be an above-ground tank.

**Board of Health** shall mean the Board of Health of the Town of Westford and/or its Agent.

**Container** means any portable device in which hazardous materials or wastes or special wastes are stored, transported, treated, disposed of or otherwise handled.

**CFR** means Code of Federal Regulations

**CMR** means the Code of Massachusetts Regulations.

**Discharge** means the disposal, deposit, injection, dumping, spilling, leaking, escape, incineration, or placing of any hazardous material or any constituent thereof into or on any land, water so that such material may enter the environment or be emitted into the ambient or indoor air, a drywell, catch-basin, landfill, sewage system, or discharged into any waters, including groundwater.

**Double-walled tank** means a container with two complete shells, which provide both primary and secondary containment. The container shall have continued 360 degrees interstitial space between the primary and secondary shells. The interstitial space shall be

designed so that an approved interstitial space monitor is able to continuously monitor this space. All double-walled tanks shall be UL-listed.

**Facility** means a commercial or industrial facility, including a home business that is registered in accordance with this regulation.

**Fire Chief** means the Fire Chief of the Town of Westford and shall include any designee of the Fire Chief.

**Hazardous Materials** means any substance or mixture of physical, chemical, infectious, flammable, combustible, radioactive, genotoxic, carcinogenic or toxic characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health, safety and welfare if such substance or mixture were discharged to land, water or in the air. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under M.G.L.ch. 21C and 21E and 310 CMR 30.00.

**Hazardous Waste** means any substance included on the Massachusetts Oil and Hazardous Materials List (MOHML), 310 CMR 40.1600, when disposed of as a waste.

**Health Department** means the Health Department of the Town of Westford.

**Label** means any written, printed, or graphic material displayed or affixed to containers of toxic or hazardous materials.

**Hazardous Waste Generator** means any person or site whose processes and actions create hazardous waste (see 40 CFR 260.10).

**Hazardous Material User** means any commercial enterprise, government agency, owner or operator that utilizes hazardous materials for any purposes.

**MassDEP** means the Massachusetts Department of Environmental Protection

**MSDS** means the most current version of the Material Safety Data Sheet, which defines any written or printed material concerning a hazardous chemical-and which is prepared in accordance with 29 CFR 1910.1200(g).

**Owner** means any person or legal entity with legal ownership of a site or facility and/or business.

**Operator** means the lessee or person(s) in control of and having responsibility for the daily operation of a facility for the storage and dispensing of toxic and hazardous materials.

**Out of service** means not in use, with no regular filling or drawing; or not being maintained, without adherence to the requirements of this bylaw; or uncontrolled, without being attended or secured; or any combination thereof.

**Person in Charge (PIC)** means the individual present at a facility who is responsible for the operation at the time of the inspection.

**Release** means any uncontrolled movement of any hazardous material out of a tank or storage facility or its components, or any uncontrolled movement of water into a tank or storage facility or its components, measured as set forth in 527 CMR 9.02.

**Reportable discharge** means the quantity of a specific material under the Massachusetts Contingency Plan, 310 CMR 40.0000 that must be reported to MassDEP; the threshold quantity above which a spill or release of oil or a hazardous material must be reported to the MassDEP.

**Site** means a commercial, private, retail, or school establishment and/or property/parcel.

**Storage Facility or Facility** means an area where hazardous materials are is stored until it can be transported to a treatment facility.

**Special Waste** means any solid waste that is determined not to be a hazardous waste pursuant to 310 CMR 30.000 and that exists/n such quantity or in such chemical or physical state, or any combination thereof, so that particular management controls are required to prevent an adverse impact from the collection, transport, transfer, storage, processing, treatment or disposal of the solid waste. Without limitation, special waste includes waste that will require special management to ensure protection of public health, safety, or the environment based upon the physical, biological, or chemical properties of the waste. Special wastes include but are not limited to: asbestos waste, infectious wastes, except as specified in 310 CMR 19.061(6) (c)4, sludges including wastewater treatment sludges, and industrial process wastewater treatment sludges. For the purposes of this bylaw, special wastes do not include drinking water treatment sludges. (Ref: 310 CMR 19.006 and 19.061(2) and (3).).

**Town** means the Town of Westford

**Underground Storage Tank (UST)** means any tank or storage facility including fill lines, supply lines, and vent lines and all associated connections and appurtenant structures where 10 percent or more of the tank volume is below the ground surface (527 CMR 9.02) but which shall not include storage in a freestanding container or tank within a building.

#### **§61.4. Permits and registration commercial and retail.** [Amended 11-12-2002 STM Art. 16]

- A. All commercial or retail establishments that maintain tanks, containers, or storage facilities with an individual capacity to hold more than 50 gallons liquid volume used for storage, use, processing or generation of hazardous materials, hazardous wastes or special wastes shall apply for a permit from with the Health Department and the Fire Department, if applicable. The permit shall be granted for one year, and may be renewed by the Health Department unless there has been a substantial change in the quantity, type or method of storage, generation or use, or the Board of Health's designee concludes for any reason that reissuance of the permit should be reviewed by the Board of Health. This permit shall be in addition to any license required in accordance with M.G.L. Ch. 148, s. 13 and/or any permit required in accordance with 527 CMR 14.00 or any other Fire Prevention Regulation. Such a permit application shall contain the following information:
1. Name, address, and telephone numbers (day and night) of the owner or operator.
  2. Capacity and contents of the tank or storage facility, with specific description of the type of hazardous material being stored.
  3. The date of installation of or storage facilities, if available.
  4. The type(s), size(s), age(s), and location(s) of all containers, tanks and/ or storage facilities, and description of leak detection methods in place.
  5. If the tank or storage facility is underground, additional material as required by § 61.6, herein.

6. A site plan showing the location(s) of tanks or other storage containers. If the tank is an Underground Storage Tank, the depth of the bottom and top of the tank must also be indicated in cross-sectional view.
- B. Owners or operators of tanks or storage facilities that meet the permit requirements of §61.4.A shall register such tank or storage facility initially within 90 days of the enactment of this bylaw, and annually thereafter within 30 days of January 1, provided, however, that such owners or operators with currently registered tanks or storage facilities under the provisions of this chapter 61 in effect prior to the adoption of this bylaw shall register such tanks or storage facilities first within 30 days of (Date to be determined). Owners or operators of tanks or storage facilities which later meet the registration requirements shall register such tanks or storage facilities initially within 30 days of meeting such requirements, and thereafter annually within 30 days of January 1.
- C. In addition to obtaining a permit, owners or operators of tanks or storage facilities permitted in accordance with §§ 61.4.A and 61.4.B shall maintain on the premises an inventory, reconciled on a monthly basis, of purchase, sale, use, disposal, or discharge of hazardous materials. The purpose of the inventory is to detect any product loss and to provide ongoing record of all hazardous materials within the Town over the registration period. If unaccounted for product loss is discovered in the monthly reconciliation, the owner or operator shall comply with the provisions of § 61.7 herein.

Accurate daily inventory records required pursuant to M.G.L.ch. 148 or any state regulation shall suffice for the purpose of this section, and may be submitted, under § 61.4.D below, in accordance with this bylaw.
- D. Upon the request of the Health Department, owners or operators subject to this ch. shall produce, within 24 hours, their latest reconciled inventory.
- E. Evidence of the date of purchase and installation shall be included for existing storage systems, along with a plot plan showing the location of all containers, tanks, drains and piping on the property. In complex applications the Health Department and/or the Board of Health, may require a plot plan certified by a Professional Land Surveyor. Any changes in the information contained in the initial application, including any change in the use of the storage system, shall be reported immediately.
- F. A list of daily amounts stored, used or generated and estimate of yearly throughput of all hazardous materials and waste and special waste to be used, stored or generated on the site, and copies of pertinent Material Safety Data Sheets.
- G. Documentation stating that all information previously filed with the Health Department is correct, or indicating a change in the status of the existing permit shall be submitted annually. A new permit shall be obtained within thirty days from the Health Department whenever there is any change in the type or method of generation, use or storage, or significant change in the quantity or composition of hazardous

materials or wastes or special wastes previously permitted; the method of storage, generation or use falls to comply with information previously submitted to the Health Department.

- H. The Health Department and/or the Board of Health may require additional information if it is necessary to adequately evaluate the application.

#### **§ 61.5 Exceptions.**

Application of fertilizers, herbicides and pesticides used in accordance with applicable local, state and federal regulations shall be exempt from this bylaw. Application of deicing chemicals in conformance with the Massachusetts Snow and Ice Control Program, application of swimming pool chemicals, and application of water treatment chemicals by the Town of Westford Water Department and storage of such chemicals are also exempt from this bylaw. This bylaw also shall not apply to discharge of ordinary sanitary wastewater into a septic system installed in accordance with applicable State and local regulations or to ordinary uses of household or garden products used in accordance with applicable labeling instructions from state and federal law. Nothing in this bylaw prohibits the Board of Health from limiting or prohibiting the use of any such product by appropriate regulations in the future.

#### **§ 61.6 Exceptions to permit requirement.**

Permits shall not be required under this bylaw for the following:

- A. Septic Systems
- B. Gasoline and diesel fuel stored in tanks mounted on a vehicle and used to fuel vehicles on a construction site.
- C. Hydraulic oil reservoir tanks on heavy equipment.
- D. Use of domestic biodegradable cleaners for residential and business maintenance.
- E. Aboveground fuel oil tanks, including tanks in a basement, installed solely for the purpose of heating the building and/or providing hot water.
- F. Aboveground and underground propane tanks and liquefied petroleum gas (LPG) tanks installed solely for the purpose of heating the building and/or providing hot water or to operate an emergency generator.
- G. Storage by a facility of consumer-sized containers of hazardous materials such as motor oil, cleaning supplies, paint, paint thinner, lawn chemicals, weed killer, and any other such commercially available products intended for retail provided that each individual container holds less than 50 gallons liquid volume.
- H. The Board of Health may impose conditions on any storage permit as necessary to serve the purposes of this bylaw or to protect the public health and environment.

#### **§ 61.7 Permits and registration – residential.**

Hazardous Materials Storage September 23, 2013 Version with formatting.

- A. All residences with an existing underground fuel storage tank used to store No. 2 fuel oil shall apply for a permit from the Board of Health following the same requirements set forth in § 61.4.
- B. Aboveground fuel storage tanks at residences, including tanks maintained in a basement/ cellar or outbuilding, are exempt from permit requirements.
- C. New residential underground fuel storage tanks used to store No. 2 fuel oil are prohibited under this regulation except by special permit.
- D. All existing and new aboveground fuel storage tanks must comply with the fuel line requirements of all applicable federal, state and local laws, rules and regulations, including but not limited -to M.G.L. C148, § 38J(d).
- E. Aboveground and underground propane tanks and liquefied petroleum gas
- F. (LPG) tanks installed solely for the purpose of heating the building, cooking and/or providing hot water or to operate an emergency generator are exempt from permit requirements.

**§ 61.8. Prohibition. Discharge reporting, defects, and remedial actions.**

- A. There shall be no discharge of hazardous materials, hazardous wastes or special wastes within the Town of Westford through land, water, or air transmission without a permit for such action by an authorized agent of a federal, state, or local agency or without a hearing from the Board of Health unless otherwise excepted or exempted under this bylaw.
- B. Owners, Operators and/or Persons in Charge must immediately report any discharge, leaking tanks or abnormal loss of hazardous materials or waste or special waste and shall provide a reasonable estimate of the nature and quantity of the discharged hazardous materials, wastes or special wastes to the Health Department and the Fire Chief within 12 hours of knowledge of the discharge in addition to meeting the notification requirements of all applicable federal, state, or local laws, rules and regulations, including but not limited-to the Massachusetts Contingency Plan in 310 CMR 40.0300.
- C. No area within which hazardous materials, hazardous wastes, or special wastes are used, stored or generated may contain a floor drain that leads to a storm drain or a septic system. Floor drains in such areas shall drain into containment vessels for removal by a MassDEP-approved hazardous waste carrier. All other drains shall be permanently sealed off.
- D. No residues or waste waters resulting from hazardous material or waste or special waste spill cleanup procedures shall be disposed of into drains or other facilities

leading to storm drains, septic systems, and/or Waste Water Stations. All such residues and waste waters shall be contained for removal by a MassDEP- approved hauler.

- E. Any release or discharge of hazardous material, hazardous waste or special waste shall be immediately contained and reported to the MassDEP if the quantity of material discharged exceeds the Reportable Quantities (RQ) listed in the Massachusetts Oil and Hazardous Materials List (MOHML). Owners, Operators, and persons in Charge of Facilities that store hazardous material, hazardous wastes, or special wastes shall familiarize themselves with the Massachusetts Contingency Plan reporting requirements.
- F. Releases of quantities of material less than the RQs that do not have to be reported to MassDEP shall be cleaned up immediately. Clean-up and proper disposal of any discharged or abnormally lost hazardous material, hazardous waste, or special waste shall be the responsibility of the owner or operator, hazardous material generator, or user including cost of the cleanup and disposal. All cleanup must be conducted in a way that will not contribute to risk of fire, explosion, or other environmental hazard.

#### **§ 61.9 Requirements for approval of hazardous material and waste and special waste permits.**

Hazardous materials and waste and special waste permits with the exception of residential home heating oil tanks, shall be granted by the Health Department only if the following criteria are met:

- A. The proposed storage, use or generation system shall provide adequate discharge prevention safeguards which are appropriate to the materials and wastes to be stored, used or generated and to the location of the storage, use or generation.
- B. The proposed storage, use or generation system shall comply with all local, state and federal regulations.
- C. The proposed storage, use or generation system shall not cause a threat to the public health and safety or to the environment.
- D. The applicant has established a satisfactory hazardous materials and waste and special waste discharge contingency plan.
- E. All hazardous materials or wastes or special wastes to be stored above ground shall be stored in product tight containers on an impervious, chemical resistant surface, under cover and sheltered from the weather unless otherwise specified by the Board of Health. The storage area shall be enclosed with a permanent dike of impervious construction providing a volume of at least 100% of the maximum volume of the largest single container or tank plus 10% of the total storage capacity. All outdoor storage areas shall be surrounded by a five-foot fence, at a minimum, and shall be kept locked at all times when unattended.

- F. Hazardous Waste shall be held on the premises for removal by a licensed carrier in accordance with the Massachusetts Hazardous Waste Management Act, MGL Ch. 21C.
- G. Owners, Operators, and Persons in Charge shall park delivery trucks or tank trailers that carry hazardous materials only in designated overnight parking areas approved by the Health Department and Fire Department. These parking areas must allow for detection and containment of discharge from the parked vehicles that are acceptable to the Board of Health and Fire Department.

#### **§ 61.10 Above-ground tanks or storage facilities.**

- A. Surfaces underlying above-ground tanks or storage facilities containing hazardous materials, or areas in which hazardous materials are used, transferred, or delivered to such tanks or storage facilities, shall be impermeable to the materials being stored, and shall be enclosed by a permanent dike of impermeable construction. The dike system shall be sufficient to contain the capacity of the largest tank or storage facility plus 10% of the aggregate capacity of all other tanks or storage facilities within the enclosure. Double-walled tanks with continual interstitial monitoring may meet the diking requirements of this regulation. Nothing in this section shall be construed to replace the application of the dike requirements to tanks or storage facilities licensed under M.G.L.ch. 148.
- B. Wastes containing hazardous materials shall be held on the premises in product-tight containers for removal by a licensed carrier for disposal in accordance with M.G.L.ch. 21C.
- C. Above-ground tanks or storage facilities shall be prominently labeled to provide notice as to the types of hazardous materials stored within.
- D. This section does not apply to residential or commercial above-ground heating oil tanks used solely to store fuel oil used for heating the building, cooking, and/or providing hot water.

#### **§ 61.11 Inventory and monitoring of above ground storage systems.**

All hazardous materials or special wastes stored above ground, with the exception of residential and commercial heating oil tanks, shall be monitored weekly unless more frequent monitoring is specified in the permit. Monitoring shall consist of a thorough visual inspection of the container(s) and tank(s) and inventory of materials as well as the dike area for deterioration, leakage or unaccounted for loss of materials. All owners and operators shall maintain a written record of monitoring. This record must be available for inspection by the Health Department on request.

#### **§ 61.12 Record retention.**

Throughout the permit period, owners, users, generators, or operators shall keep copies of all Hazardous Waste Transport Manifests on-site, as required under the Resource Conservation and Recovery Act 42 USC § 6901 et seq. and the Massachusetts Hazardous Waste Management Act



MGL ch. 21C, 315 CMR, § 2.04. If a hazardous waste generator is exempt from the manifest requirements sufficient proof of a proper disposal method shall be maintained.

**§ 61.13 Underground tanks or storage facilities.**

- A. In addition to the information set forth in §§ 61.4 and 61.7, all owners or operators, including residential owners, of underground tanks or storage facilities containing oil or hazardous materials, in any quantity, shall provide to the Health Department and the Fire Department, if applicable, the following additional information:
  - 1. The location of each tank or storage facility on the premises, complete with sketch map.
  - 2. The age and size of each tank or storage facility, evidence of the date of installation, including any permits, if applicable. Such information shall be filed in the same manner, and at the same times, as that information required by § 61.4, above.
- B. All materials used in the construction of any underground tank or storage facility shall be suitable for the purpose, and such tank or storage facility shall be designed or constructed to withstand any normal stress to which it may be subjected. Where applicable, such tank or storage facility shall be constructed in accordance with M.G.L.ch. 148 and 527 CMR 9.00 et seq., as amended.
- C. Owners or operators of underground tanks or storage facilities for which evidence of an installation date is not available shall, at the order of the Health Department, have such underground tanks or storage facilities tested, in accordance with procedures set forth in 527 CMR 9.05(F) which are incorporated herein. Tanks that fail a tightness test that cannot be reconciled shall be taken out of service and removed in accordance with the requirements of 527 CMR 9.00.
- D. All steel underground storage tanks or storage facilities shall be subject to mandatory tightness testing 15 years after the date of installation, and annually thereafter. Owners or operators may request a variance from the testing requirement if they demonstrate to the Health Department that such tests are not appropriate because of the presence of monitoring devices, double-walled construction, or equivalent safety precautions. The Health Department, after reviewing the information, may determine that the underground tank or storage facility does not represent a threat to ground or surface water quality. Such variance shall be required yearly. Nothing in this subsection shall be construed to replace or supersede the testing requirements of 527 CMR 9.00 or any other state regulation.
- E. All steel underground storage tanks exempted under the provisions of § 61.13D herein must be tested for tightness at 20 years after installation, and every third year thereafter. All tanks constructed of fiberglass or other materials must be tested at 20 years after installation and every third year thereafter.

- F. All residential fuel storage tanks used to store No. 2 fuel oil must be tested for tightness at 20 years after installation and every third year thereafter.
- G. The Board of Health recommends that all steel underground storage tanks or storage facilities with a capacity of less than 550 gallons be removed immediately after the termination of the manufacturer's warranty for the facility, or after 15 years of the date of installation of the facility, whichever occurs last.
- H. Where the Health Department has probable cause to believe that an underground tank or storage facility has caused a leak or a discharge to occur, said Board may order the testing for tightness of such tank or storage facility within 3 workdays.
- I. If the testing required by this section indicates that a leak or discharge has occurred, the owner or operator shall proceed in accordance with § 61.8, herein.
- J. Underground tanks or storage facilities shall have appurtenances prominently labeled to provide notice as to the types of hazardous materials stored within.
- K. All owners or operators of UST systems must provide the name and contact information for the Class A, B, or C Operator responsible for maintaining the tank as required in 310 CMR 80.02 and consistent with the requirements of 527 CMR 9.
- L. **Underground storage tank removal.** Removal procedures for tanks used for storage of hazardous, flammable, or combustible material shall follow the requirements of 527 CMR 9.22 and 9.23 and 502 CMR 3.00. Prior to removal of a tank, the Fire Chief and Health Department shall be notified and the Fire Chief shall designate an inspector to oversee the tank removal unless MassDEP personnel are present. If there is any evidence of a release from an underground storage tank backfilling cannot take place until the owner has contracted a Licensed Site Professional (LSP) and all future work must be conducted under the requirements all applicable federal, state and local laws, rules and regulations, including but not limited to the Massachusetts Contingency Plan, 310 CMR 40.0000.
- M. **Repair of residential tanks.** No residential underground heating oil storage tanks shall be repaired and placed back in service. Any such tank which is in need of repair shall be removed and replaced by an above ground storage system. The Board of Health recommends that all residential underground storage tanks be removed and replaced by an aboveground (basement) tank.

**§ 61.14 Underground storage of flammable or combustible products and hazardous materials or wastes or special wastes.**

- A. **Underground storage requirements.** Owners or operators storing flammable or combustible materials in underground storage systems shall obtain a permit from the Fire Chief in addition to the permit from the Health Department. Owners and operators storing hazardous materials or wastes or special wastes underground which

are not flammable or combustible need only obtain a permit from the Health Department.

- B. **Change of material in storage tank.** Prior to any change in the material stored in an underground tank, such change of material shall be approved by the Health Department and (in the case of flammable or combustible materials) by the Fire Chief. Confirmation by the tank manufacturer that such a change in material would be compatible with the tank type shall also be submitted, in writing, to the Health Department and Fire Chief.
- C. **Underground storage tank construction.** All underground storage tanks shall be designed to minimize the risk of corrosion and leakage, and shall conform to all construction and installation requirements under applicable state and federal law. All new underground storage systems for hazardous materials or waste or special waste shall meet the standards for new underground hazardous waste tanks set forth in 310 CMR 30.693 and 30.694. Tanks for storage of hazardous wastes or flammable or combustible materials shall meet the requirements of 527 CMR 9.00.

#### **§ 61.15 Groundwater and surface water protection.**

- A. **Groundwater protection areas:** Underground storage tanks shall not be located in a groundwater protection area except by special permit, which will require demonstration of no other option for storage of fuel or other material. Underground storage tanks in groundwater protection areas must be fiberglass tanks with double-walled construction and interstitial leak monitoring. The Health Department may require installation of monitoring wells near the tank based on site-specific conditions.
- B. **Flood Zones:** Underground storage tanks shall not be located in flood zones except by special permit and must meet the same requirements as in 61.15A herein.

#### **§ 61.16 Cessation of permit.**

The holder of a hazardous materials and waste and special waste permit shall notify the Health Department immediately, in writing, whenever the activities authorized under the permit cease on a permanent basis.

#### **§ 61.17 Promulgation of rules and regulations.**

The Board of Health may from time to time pass regulations specifying categories of materials which are hazardous materials or wastes under the definition “Hazardous Material” or “Waste” of this bylaw. The Board may adopt or amend rules and regulations consistent with the provisions of this bylaw. A copy of such rules shall be filed with the Town Clerk.

#### **§61.18 Abandonment and other concerns.** [Amended 11-12-2002 STM Art. 16]

- A. The holder of any license issued pursuant to M.G.L.ch. 148 for underground storage of any liquid hazardous material shall notify the Health Department and the Fire Chief whenever the provisions of said license cease to be exercised. Upon such

notification, the Health Department and the Fire Chief shall prescribe appropriate action under M.G.L.ch. 148 and applicable state regulations.

- B. All other tanks or storage facilities, not regulated by M.G.L.ch. 148, shall be regulated as follows:
1. The owner of tank or storage facility with an intent to abandon such tank or storage facility shall promptly notify the Board of Health and the Fire Chief of the decision to abandon a tank.
  2. Abandoned tanks shall be emptied of all hazardous materials under the direction of the Health Department. Tanks shall be excavated and the product and tank shall be disposed of, at the owner's expense, in accordance with 527 CMR 9.00.
  3. If the owner of a tank or storage facility that is located under a building and which cannot be removed from the ground without first removing the building, decides, in conjunction with the Fire Chief under the provision of 527 CMR 9.00, to abandon said tank or storage facility, the owner shall promptly notify the Health Department and have all contents removed from the tank or storage facility. At the direction of the Fire Chief, the tank may be filled with a concrete slurry mix as set forth in 527 CMR 9.00, or as prescribed by the authority having jurisdiction.
  4. If the Health Department determines that a tank or storage facility or its components shall be removed, any removal shall be completed within 90 days after that authority has notified the owner, in writing, of its decision. Removal shall be at the owner's expense.

#### **§ 61.19 Variances.** [Amended 11-12-2002 STM Art. 16]

The Board of Health may vary the application of any provision of this bylaw, unless otherwise precluded by law, when in its opinion; the applicant has demonstrated that an equivalent degree of environmental protection required under this bylaw will still be achieved. The applicant at his/her own expense must notify all abutters by certified mail at least ten days before the hearing at which such variance request shall be considered. The notification shall state the variance sought and the reasons therefor. The Board of Health shall also notify, within 14 days of receipt of a variance request, the Fire Chief, Conservation Commission, and Building Inspector, of any variance requested under this Section, for their response in writing. The Board of Health shall hold a hearing on such variance request within 45 days of its receipt. Any variance granted by the Board of Health shall be in writing, as shall be any denial of a variance request, and shall contain a brief statement of the reasons for the granting or denying the variance.

#### **§61.20 Fees.**

- A. The Board of Health may charge reasonable fees and shall publish a fee schedule.
- B. The Board of Health may charge for additional expenses incurred in the enforcement of this chapter 61.

- C. Any person applying for a permit for a tank or storage facility pursuant to this chapter 61 shall pay a fee to the Town's Board of Health. Such fee shall be due on the same date as the initial or annual registration. Failure to pay the fee shall constitute a violation subject to the penalties contained herein.

**§ 61.21 Enforcement.** [Amended 11-12-2002 STM Art. 16]

- A. All discharges of hazardous material within the Town are prohibited.
- B. Any person having knowledge of any discharge of hazardous materials shall immediately report the discharge to the Health Department and the Fire Chief.
- C. The Board of Health or its designee, the Health Department or its designee, the Fire Chief or his designee may, upon reasonable notice to the occupant of the premises enter any premises for the purpose of investigating, sampling, or inspecting any record, condition, equipment, practice, or property relating to activities subject to this bylaw and for purposes of enforcing this bylaw.
- D. The Board of Health may suspend or revoke any permit or license issued pursuant to this Bylaw for any violation of this Bylaw, or any other applicable federal, state or local law, rule or regulation. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit or license holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.
- E. Any person who violates any provision of this bylaw shall be punished by a fine of not more than \$300 as allowed under MGL ch. 40 §21. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one violation exists, each violation shall constitute a separate offense. Upon the request of the Board of Health or the Fire Chief, the Board of Selectmen shall take such legal action as is necessary to enforce this bylaw.
- F. This bylaw may be enforced by the Health Department or its designee or the Fire Chief or his designee, and Town police officers. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in MG.L. c.40, §21D and the Town's non-criminal disposition by-law. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall be subject to a fine of \$300 per offense,
- G. The Board of Health and/or Fire Chief may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy shall not preclude enforcement through any other lawful means.

**§ 61.22 Severability.**

Each provision of this bylaw shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.